NO. 3306

IN THE
SUPREME COURT OF APPEALS
OF
WEST VIRGINIA

WILLIAM T. SMOOT, II,
By his next of friend, KARI MAJOR,

Appellant,

v.

AMERICAN ELECTRIC POWER,
VERIZON OF WEST VIRGINIA, INC.
And CHARTER COMMUNICATIONS, INC.

Appellee.

BRIEF FOR THE APPELLANT, WILLIAM T. SMOOT, II by this next friend, KARI MAJOR

ON APPEAL FROM THE CIRCUIT COURT OF KANAWHA COUNTY

Cynthia M. Ranson, Esquire, WVSB #4983
J. Michael Ranson, Esquire, WVSB # 3017
RANSON LAW OFFICES
1562 Kanawha Blvd. East
Post Office Box 3589
Charleston, West Virginia 25336
(304) 345-1990

TABLE OF CONTENTS

EXHIBITS

TABLE OF AUTHORITIES

WEST VIRGINIA CASE LAW

WEST VIRGINIA RULES OF CIVIL PROCEDURE

FEDERAL CASE LAW

OTHER STATE CASE LAW

LEGAL TREATISE

NATIONAL ELECTRIC SAFETY CODE PROVISIONS

No.: 3306

IN THE
SUPREME COURT OF APPEALS
OF
WEST VIRGINIA

WILLIAM T. SMOOT, II,
By his next of friend, KARI MAJOR,

Appellant,

v.

AMERICAN ELECTRIC POWER,
VERIZON OF WEST VIRGINIA, INC.
and CHARTER COMMUNICATIONS, INC.

Appellees.

APPELLANT BRIEF

Comes now the Appellant, William T. Smoot, II, by his next of friend, Kari Major, and states that he is aggrieved by an Order granting the Appellees' Motion for Summary Judgment entered by the Circuit Court of Kanawha County, West Virginia on February 22, 2007. **(See Order Attached hereto as Exhibit A)**. It was from this Order that the Appellant brought his Petition for Appeal praying that this Honorable Court accept his appeal and reverse the Order of the lower Court. On January 8, 2008, the Appellant presented his Petition for Appeal to this Honorable Court. By Order dated 10th day of January, 2008 the Appellant's Petition for Appeal was granted.

I. THE KIND OF PROCEEDINGS AND NATURE OF THE RULING IN THE LOWER TRIBUNAL

This is an action brought by the thirteen year old, Appellant, William T. Smoot, II, by his next of friend, Kari Major, his natural mother, asserting negligence by the Appellee utility providers for their joint and several failure to place substantial and conspicuous markers on guy wires that struck and seriously injured the Appellant. The inconspicuous, unmarked guy wires were located in a residential area, near a public roadway and exposed to pedestrians and youthful bicyclist.

Briefly, on August 12, 2003, thirteen-year-old William Smoot, II, was riding bicycles with his three friends and his five year old brother around the Tiffany Hills subdivision in Cross Lanes. After riding bikes for most of the afternoon, the boys left a wooded area and rode down Embassy Drive, a roadway they had previously ridden bikes on and one commonly used by youthful bikers in the area. As the boys approached a left-hand curve in the road, William Smoot was unable to negotiate the curve due to mud flying into his eye. He purposely veered his bicycle off the road negotiating through a rock barrier at the edge of Anna Farley's driveway. Still on his bicycle, Smoot traveled a few yards down the slope of Ms. Farley's hill, striking unmarked guy wires attached to the Appellees' utility pole.[1] As a result of the crashing into the unmarked, inconspicuous guy wires, the Appellant nearly severed his lower leg.

[1]In 2002, these same guy wires were struck by an automobile that left the roadway on the same curve William Smoot was unable to negotiate.

The crash, as well as the severity of the Appellant's injuries, was caused by the Appellees' failure to properly mark the guy wires on their joint utility pole as required by well established law and industry standards. By failing to properly mark the guy wires so that the wires could be seen by unsuspecting travelers, the Appellees breached their duty to the Appellant and are liable for the resulting injuries.

The Honorable Jennifer Bailey Walker of the Circuit Court of Kanawha County found as a matter of law that the infant Appellant was a trespasser at the time he rode his bicycle onto the property of Anna Farley. The lower court also found that if any duty was owed to the infant by the Appellees it was only to refrain from causing him willful or wanton injury. Finally, the lower court also found that the Appellees owed no duty to the infant Appellant because the guy wires were open and obvious and not exposed to pedestrian traffic. The Order granting summary judgment to the Appellees was entered on February 22, 2007. It is the Appellant's prayer that this Honorable Court reverses the Order of the lower Court and remands this matter with directives consistent with the well established law.

II. STATEMENT OF FACTS

The Appellees jointly use and maintain a utility pole on property located on Embassy Drive, a road located in a densely populated residential subdivision in Cross Lanes, West Virginia. The Joint Use pole has an American Electric Power line at the top, a Verizon line in the middle and a Charter Communications line nearest the ground.

The anchor for the guy wires attached to the utility pole is located on the property of Anna Jane Farley. Ms. Farley maintains the property and the area around the utility pole, the anchor and the guy wires including keeping the grass neatly mowed. The utility pole is supported by three guy wires intended to balance the loading on the pole. The guy wires do not have any markers to make them noticeable and conspicuous to people traveling, walking or driving in the area of the wires.[2] The cost of a guy wire markers, commonly used in the utility industry, is between $8.00 and $10.00.

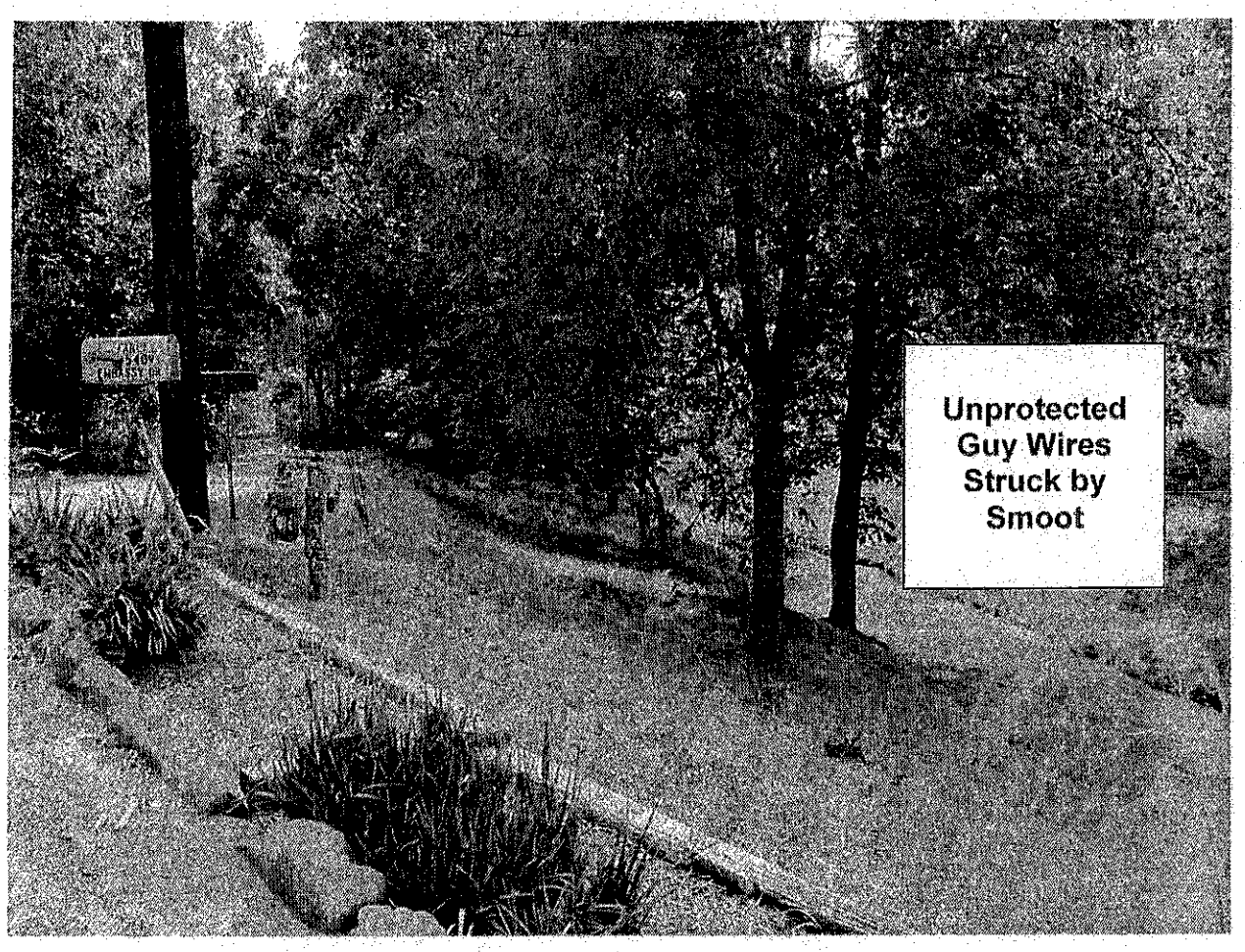
On August 12, 2003, William Smoot, II, was riding bicycles with four other boys, one of whom was his brother, Trey Smoot, five years of age, around the Tiffany Hills subdivision in Cross Lanes. (**See,** W. Smoot Dep., at pp. 19-20 attached as **Exhibit B** to Appellant's Response to Motion for Summary Judgment and J. Harper Dep., at pg 8 attached as **Exhibit C**, to Appellant's Response to Motion for Summary Judgment). Upon realizing it was nearing time to be home, the boys left a wooded area near the Cross Lanes Christian School and rode down Embassy Drive toward their respective homes. Embassy Drive is a road the boys had previously taken and one commonly used by other youthful bikers in the area. (**See**, C. Carpenter Dep. at pp. 8 and 14 attached as **Exhibit D** to Appellant's Response to Motion for Summary Judgment). As the boys approached a left-hand curve in the road, William Smoot was unable to negotiate the curve due to a speck of mud flying into his eye so he veered off the road driving through a rock barrier at the edge of Anna Farley's driveway. Still on his bicycle,

[2]The guy wires on the next utility pole on Embassy Drive have requisite conspicuous markers and are also owned by the Appellee, AEP.

Smoot traveled a few yards down the slope of Ms. Farley's hill, striking the unmarked guy wires on the Appellees' utility pole and crashing to the ground.[3] As a result of the crashing into the unmarked, inconspicuous guy wires, the Appellant suffered a severe injury to his leg.

By way of explanation, there are a number of houses in the immediate vicinity of the utility pole and unmarked guy wires. There is a public road immediately adjacent to the Appellees' utility pole. The pole in question is located on the property of Anna Farley. The unmarked lines are attached to the top of the utility pole and run diagonally to the ground where they are attached to an anchor which is buried in the ground. The guy wires are pulled taunt and balance the load on the utility pole. The spot where Smoot struck the wires is approximately 19 feet from the public roadway.

[3]In 2002, these same guy wires were struck by an automobile that inadvertently left the roadway in the same curve. (**See**, C. Carpenter Dep. pp. 7-9, attached as **Exhibit D** to the Appellant's Response to Motion for Summary Judgment). The Appellee, AEP was called to the scene and repaired the damage to the utility pole transformer caused by the automobile striking the wires.



There is no doubt but that the contact with the unmarked guy wires caused the injuries to William Smoot. The **National Electric Safety Code** requires the Appellees to properly mark the guy wires on the joint utility pole. By failing to properly mark the guy wires so that they could be seen by unsuspecting travelers, the Appellees breached their duty to the Appellant and are consequently liable for the resulting injuries. Well established law and an abundance evidence supports the Appellant's prima facie case of negligence against the Appellees. The Appellees' Motion for Summary Judgment should have been denied by the lower court.

III. ASSIGNMENTS OF ERROR

Whether the Court below erred by finding as a matter of law that William Smoot was a trespasser when he rode his bicycle onto the property of a third party inadvertently coming into contact with Appellees unmarked guy wires?

Whether the Court below erred by granting summary judgment and dismissing the Appellant's negligence cause of action based upon a finding that the Appellees did not a have a duty to place conspicuous markers on guy wires which were clearly in an area exposed to pedestrian traffic?

IV. POINTS AND AUTHORITIES RELIED ON

STANDARD OF REVIEW

A circuit court's entry of summary judgment is reviewed de novo. See, *Syllabus Point 1*, **Painter v. Peavy**, 192 W.Va. 189, 451 S.E.2d 755 (1994). In reviewing summary judgment, this Court should apply the same test that the circuit court should have used initially, and determine whether "it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." **Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York,** 148 W.Va. 160, 133 S.E.2d 770 (1953). In accord, *Syllabus Point 1*, **Andrick v. Town of Buckhannon**, 187 W.Va. 706, 421 S.E.2d 247 (1992); *Syllabus Point 1,* **Williams v. Precision Coil, Inc.**, 194 W.Va. 52, 459 S.E.2d 329 (1995); *Syllabus Point 3*, **Evans v. Mutual Mining**, 199 W.Va. 526, 485 S.E.2d 695 (1997).

Summary judgment is appropriate only if, from the totality of the evidence presented, the record could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove. *Syllabus Point 2*, **Williams v. Precision Coil, Inc.**, 194 W.Va. 52, 459 S.E.2d 329 (1995).

Pursuant to **Rule 56(c) of the West Virginia Rules of Civil Procedure,** summary judgment is appropriate only when the record shows that there is "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Roughly stated, a "genuine issue" for purposes of West Virginia Rule of Civil Procedure 56(c) is simply one half of a trialworthy issue and a trialworthy issue is present where the non-moving party can point to one or more disputed "material" facts. A material fact is one that has the capacity to sway the outcome of the litigation under the applicable law. *Syllabus Point 5*, **Jividen v. Law**, 194 W.Va. 705, 461 S.E.2d 451 (1995) and *Syllabus Point 2*, **Fayette County National Bank v. Lilly**, 199 W.Va. 349, 484 S.E.2d 232 (1997).

Finally, the party that moves for summary judgment "has the burden of showing that there is no genuine issue of fact and any doubt as to the existence of such issue is resolved against the movant for such judgment." *Syllabus Point 6*, **Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York**, 148 W.Va. 160, 133 S.E.2d 770 (1963). Consequently, summary judgment should be denied, "even where there is no

dispute as to the evidentiary facts in the case but only as to the conclusions to be drawn therefrom." **Williams**, 194 W.Va. at 59, 459 S.E.2d at 336 (quoting **Pierce v. Ford Motor Co.**, 190 F.2d 910, 915 (4th Cir.1951)). It is in applying this standard that this Court must review the Appellees' motion for summary judgment.

V. DISCUSSION

A. William Smoot, thirteen years of age, was not a trespasser when he struck the appellees' unmarked guy wires located on the property of Anna Farley.

The lower court clearly erred in ruling that William Smoot was a trespasser as to the Appellee utility companies. Further, it is contrary to well established law to permit the Appellees to cloak themselves in a "no liability" cape by proclaiming that William Smoot was a trespasser. William Smoot was a **not a trespasser** by definition and cannot be classified as a trespasser as to one who maintains electric wires either on or in such proximity to the lands of a third person so that the child on such lands may come in contact with the wires. **Sutton v. Monongahela Power Co.**, 151 W.Va. 961, 158 S.E.2d 98 (1967). Thus, a claim by the Appellees that William Smoot was a "trespasser" is not a viable defense for these Appellees and certainly cannot be the basis upon which summary judgment is granted.

Factually, the guy wires at issue exist in a densely populated subdivision in Cross Lanes, West Virginia. The guy wires are in very close proximity to a public, hard

surfaced road where children commonly walk and ride their bicycles. The property upon which the guy wires are located is owned by Anna Farley who mows the property regularly as part of her yard. Finally, the area where the guy wires are located is easily accessible by foot, bicycle or automobile. The uncontroverted evidence is that Embassy Drive, and particularly the stretch of road upon which the boys were riding on this day, is commonly used by pedestrians, youthful bicyclers and automobiles.

Immediately prior to colliding with the unmarked guy wires, William Smoot was enjoying a carefree day of bicycle riding in his neighborhood with his friends and younger brother. While riding down Embassy Drive, and after wiping a speck of mud from his eye, William realized that he would be unable to safely negotiate the Embassy Drive curve. Consequently, he opted to steer his bicycle over the hillside located in Anna Farley's yard. Ms. Farley's yard is immediately adjacent to Embassy Drive. William had no concern about steering his bicycle in this direction as he was unaware of the imminent danger just ahead. Unexpectedly, and after traveling a short distance down the Farley hillside, William collided with the Appellees unmarked guy wires and nearly sheared off his leg.

According to Smoot, and other eyewitness testimony, William was on his bicycle and in control of his bicycle when he went over the hillside. (**See**, Smoot Deposition Transcript at Page 47 (attached as **Exhibit B**); Andrew Morrison Deposition Transcript at Pages 24, 25 and 27 (attached as **Exhibit E**) Additional, eyewitness testimony

confirms that William Smoot was on his bicycle when he struck the unmarked guy wires. (See, Melba Farley statement relied on by Appellant's Expert, James Taylor, attached as Exhibit F) Finally, it is Smoot's testimony and belief that he could have avoided the guy wires if he could have seen the wires as he descended the hillside in Anna Farley's yard. Unfortunately, William Smoot could not and did not see the unmarked guy wires which easily blend into the trees and grass. (See, Photograph of Anna Farley Yard included herein on Page 6)

Declaring William Smoot a "trespasser" is contrary to well established law as he clearly is not recognized as a trespasser as to the Appellee utility companies. **Sutton v. Monongahela Power Co.**, 151 W.Va. 961, 158 S.E.2d 98 (1967). By definition, a trespasser is one who goes upon the property or premises **of another** without invitation, express or implied, and does so out of curiosity, or for his own purpose or convenience, and not in the performance of any duty to the owner. **Huffman v. Appalachian Power Co.**, 187 W.Va. 1, 415 S.E.2d 145 (1991). West Virginia common law presently recognizes that **landowners and possessors** owe any non-trespassing entrant a duty of reasonable care under the circumstances. Additionally, West Virginia common law has retained the traditional rule with regard to a trespasser that being a **landowner or possessor** need only refrain from willful or wanton injury. **Mallett v. Pickens**, 206 W.Va. 145, 522 S.E.2d 436 (1999). However, a significant factual distinction exists in the case presently before the Court. None of the Appellees own or possess the land upon which William Smoot traveled immediately prior to striking the unmarked guy

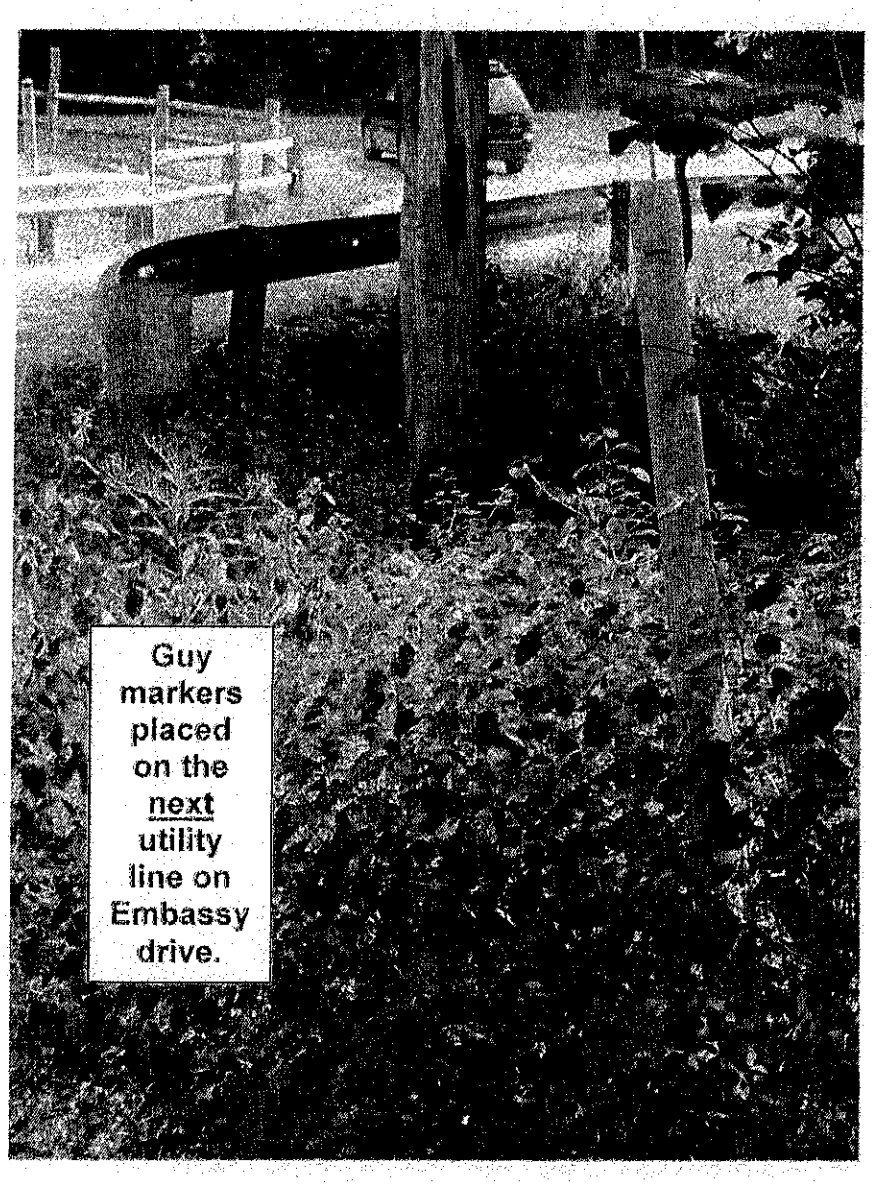
wires. The Appellees therefore are not afforded the same legal defense or protection as is afforded a landowner upon whose land is being "trespassed".

The West Virginia rule relative to this matter and the Appellees requisite duty of care is concisely stated in *Syllabus Point 1* of **Adams v. Virginia Gasoline & Oil Co.,** 109 W.Va. 631, 156 S.E. 63 (1930), where this Court unequivocally held that "an owner or proprietor of a dangerous instrumentality maintained on another's property must exercise reasonable care to avoid injury to a trespassing child whose presence at the time and place of danger was either known to the proprietor or might reasonably have been anticipated." Ordinarily, children are not exempt from the general rule that a proprietor owes no duty to trespassers but this rule does not apply where there is an exposed and unguarded danger and it is known to the proprietor that (a) children are in the habit of resorting for play to the property, at the place of danger or in its immediate vicinity, or (b) that children are actually present at the time and place of danger. In such situations, the proprietor must exercise reasonable care to avoid injuring the children, and whether such care has been shown it is **generally a question of fact for jury** determination. **Adams v. Virginian Gasoline & Oil Co**. 109 W.Va. 631, 156 S.E. 63 (1930) Hence, the trial court's granted of summary judgment in the case currently at issue is contrary to law.

There was a complete failure by the trial court to apply the well established law regarding duty of care as the Appellees successfully argued that if a duty was owed to

William Smoot it was only a duty to refrain from willful and wanton conduct. However, as the Appellees utility companies do not own the land upon which they claim William Smoot trespassed but instead maintain a dangerous instrumentality upon that land then the duty of care rises to a much higher standard. **Adams v. Virginia Gasoline & Oil Co.,** 109 W.Va. 631, 156 S.E. 63 (1930) (an owner or proprietor of a dangerous instrumentality must exercise **reasonable care** to avoid injury to a trespassing child)

Clearly, the Appellees owed the Appellant a duty of care and that duty **required** them to use reasonable care to place substantial and conspicuous markers on the subject guy wires located in an area exposed to pedestrian traffic. Reviewing the evidence in the light most favorable to the Appellant, the Appellees knew (1) about a prior accident at the same location; (2) placed guy markers on the **next** utility line in the same neighborhood on the same street in an area clearly less accessible than the area where William Smoot was injured; and the Appellees admitted that they had (3) knowledge of regulations requiring that guy markers be placed on wires exposed to pedestrian traffic and (4) admitted that the area was accessible by pedestrians and bicycles. Clearly, the Appellees' failure to place guy markers on the lines in question was a breach of their duty, to William Smoot, to use reasonable care.



In support of labeling a child riding a bicycle on to the property of another a trespasser, the Appellees cited cases to the lower court in which an actor deliberately entered the property of another "out of curiosity, or for his own purpose or convenience." (See Appellees' Summary Judgment Memorandum, p. 8, citing **Brown v. Carvill**, 206 W.Va. 605, 527 S.E.2d 149 (1998) and **Huffman v. Appalachian Power Co**. 187 W.Va. 1, 415 S.E.2d 145 (1991)). These cases, cited by the Appellees, are completely

distinguishable and inapplicable to the facts presented in the present case. For example, **Brown v. Carvill** arises out of a direct claim against a property owner who stretched a chain across a roadway located on this property and with which a motorcyclist collided. In **Huffman v. Appalachian Power Co.**, a case heavily relied on by the Appellees; the "child" was an eighteen (18) year old who was injured when he intentionally climbed a high voltage tower in a public park owned by the power company. Furthermore, in **Huffman**, the eighteen (18) year old reportedly had above average intelligence and had completed some military training, acknowledged that he **was aware** that there were electrical wires on top of tower and that **he knew** electrical wires could be dangerous, and admitted to seeing the **warning signs** stating "Danger, High Voltage, Keep Off" affixed to bottom of the tower.

Incredibly, the Appellees maintained, and the lower court obviously agreed that the scenario in **Huffman** is "similar" to that of Smoot, a thirteen year old child riding his bicycle onto the private property of another, unaware of the existence of electrical wires and with the complete absence of warning signs and/or markers. (**See, Page 5** Order Granting Motion for Summary Judgment, attached as Exhibit A) Clearly, the act of an eighteen year old with military training and above average intelligence entering a public park and deliberately climbing a high voltage tower is hardly comparable to a thirteen year old child bicyclist failing to make a turn, traveling onto the property of another and then inadvertently running into unseen and unmarked guy wires.

In fact, the **Huffman** Court was careful to distinguish an "accidental trespasser" from an intentional trespasser to whom an Appellee may be relieved of a duty of care. In **Huffman**, the Court held that "where the trespass is merely technical, for example, the possessor of the property is not insulated from liability for his failure to exercise reasonable care." 415 S.E.2d at 149.[4] The Court in **Huffman** cited numerous cases in which an unsuspecting victim committed a technical trespass by inadvertently coming into contact with power lines located within a power company's easement. "Each of these victims was a trespasser only to the extent that he came into contact with the wires," the Court held. **Id.** With regard to such accidental trespassers, the Court in **Huffman** held:

> The general rule is that one who unlawfully enters onto the property of another by mistake or accident, particularly where he was misled into doing so by some conduct of the owner or occupant of the property, has not committed such a trespass as will preclude him from recovering damages for injuries incurred on the premises as a result of the negligence of the owner or **occupant**. 62 Am. Jur.2d *Premises Liability* §§ 115, 116, 65 C.J.S. Negligence §§ 63(3), 63(7), 63(19)**.(Emphasis Added)**

Clearly, the lower court's reliance on Huffman to support its conclusion that the Appellee utility companies are somehow relieved of their duty of due care on grounds that Appellant Smoot was a trespasser is completely contrary to the holding enunciated by this Court in **Huffman**.[5]

---

[4]Citing C.J.S. *Negligence* § 63(19).

[5]As noted, Appellees do not even have standing to make this argument since they do not own the land on which Smoot allegedly trespassed.

If the case proceeds under the incorrect presumption that William Smoot was a trespasser, genuine issues of material fact still exist as to whether the Appellees created a dangerous condition on the property of Anna Farley. It must be determined whether the unmarked guy wires created a hidden danger or trap to a William Smoot and whether the Appellees acted in a willful wanton manner in not only creating the condition but allowing it to exist must be determined by a jury. **Brown v. Carvill**, 206 W.Va. 605, 527 S.E.2d 149 (1998)

When considering a motion for summary judgment the Court must resolve all factual inferences in favor of the non-movant. **Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York**, 148 W.Va. 160, 133 S.E.2d 770 (1963) In deciding whether the Appellees acted in a willful and wanton fashion, this Court must recall that the Appellees were (1) aware that children, both pedestrians and bicyclist frequented the area where the wires were located; (2) aware that the guy wires at issue were unmarked and had been so unmarked since at least 2002 when a car crash occurred and involved the same guy wires; (3) aware that the guy wires blended in with the surrounding trees and grass; (4) aware that contact with wires could cause serious bodily injury and (5) aware that no care was exercised to adequately warn unsuspecting travelers. The foregoing clearly creates a genuine issue of material fact which should be decided by a jury and which prevent the granting of summary judgment.

B. WILLIAM SMOOT, A THIRTEEN YEAR OLD, DID NOT HAVE THE CAPACITY TO BE GUILTY OF CONTRIBUTORY NEGLIGENCE

Factually, William Smoot did absolutely nothing to contribute to or cause his injuries or damages. To the contrary, he was merely riding his bicycle when he unwittingly traveled onto the property of a third person. Upon doing so, William Smoot struck unmarked guy wires owned by the Appellee utility companies. **Legally**, William Smoot, a thirteen (13) year old did absolutely nothing to contribute to or cause his injuries or damages. This Court has traditionally and consistently held that there is a conclusive presumption that a child under the age of seven (7) is incapable of negligence **Shaw v. Perfetti**, 147 W.Va. 87, 125 S.E.2d 778 (1962) and with children between the ages of seven (7) and fourteen (14), the conclusive presumption disappears, and a rebuttable presumption applies. However, the burden is upon the party attempting to overcome the presumption to prove that the child has the capacity to be guilty of contributory negligence. This Court explained this rule in *Syllabus Point 2* of **Jordan v. Bero**, 158 W.Va. 28, 210 S.E.2d 618 (1974) wherein the Court held that:

> "In tort law there is a rebuttable presumption that a child between the ages of seven and fourteen is not guilty of contributory negligence. To overcome this presumption, the burden is upon a Appellee to prove by a preponderance of the evidence that a child of such age has the capacity to be guilty of contributory negligence."

In a half-hearted effort to argue that William Smoot was somehow responsible for his own injuries, the Appellees suggested that William Smoot was operating an out-of-

control "vehicle" at the time he went over the hillside into Anna Farley's yard. Clearly, William Smoot was not operating a "vehicle" at the time he went over the hillside but was instead riding a child's bicycle. Thus, any argument regarding "out-of control vehicles" does not square with the facts of the case before this Court.

Whether the William Smoot was riding an out of control bicycle immediately prior to striking the unmarked guy wires is a **hotly disputed** issue of material fact. William Smoot denies that he lost control of his bike any time prior to striking the unmarked guy wires. (**See**, W. Smoot Dep. p. 47 attached to Appellant's Response to Motion for Summary Judgment as EXHIBIT B). The friends riding with William Smoot at the time of the crash also deny that William was out of control at the time he contacted the unmarked guy wires. Andrew Morrison, a 12-year-old boy riding with Smoot at the time of the crash, testified that Smoot's bike was upright when it went over the incline and that Smoot was "not completely out of control when he went over the hill." (**See**, A. Morrison Dep. p. 12 attached to Appellant's Response to Motion for Summary Judgment as Exhibit H). Another bicyclist, Josh Harper, stated that Appellant Will Smoot and his bike became airborne after hitting the rocks and going over the hill. (**See**, J. Harper Dep., p. 32 attached to Appellant's Response to Motion for Summary Judgment as EXHIBIT C).

The Appellant's expert, James Taylor, testified that, based upon his review of the evidence and particularly the **statement of Melba Jane Farley**, the daughter of the landowner and an adult eyewitness to the accident, he believes that Appellant Smoot was still in control of his bicycle at the time he went over the hill and contacted the unmarked guy wires. (See, J. Taylor dep., Vol. II, p. 29 attached to Appellant's Response to Motion for Summary Judgment as **EXHIBIT A**). Melba Jane Farley stated that William Smoot was still on his bicycle when he struck the unmarked guy wires. Clearly, there is more than enough evidence to present a colorable argument that William Smoot remained upright on his bike after maneuvering through the rocks lining the Farley driveway and to support the Appellant's contention that he maintained enough control over his bicycle to have avoided the guy wires had the wires been visible to him.

Curiously, the cases cited by the Appellees in support of the "no duty" defense are based on extraordinary exigencies involving the operation of automobiles. Obviously, automobiles are operated by persons over the age of sixteen years and more likely than not by persons over the age of eighteen years. The case at bar involves the operation of a child's bicycle by a child. The actions of a thirteen year old child cannot be compared to those of any adult operating an automobile and children are not held to the same standard as adults.

Additionally, none of the cases cited by the Appellees in support of the

"extraordinary exigencies" doctrine are West Virginia cases and therefore have no precedential value to this Court or to the case at bar. Finally, the duty sought to be imposed in the "extraordinary exigencies" cases cited by the Appellees require far more than the mere placement of guy markers on guy wires. For example, in **Oram v. New Jersey Bell Telephone** *Co.*, 334 A.2d 343 (N.J. Super. 1975), the Appellant alleged negligent placement of a telephone pole located three feet off of the roadway. The Appellant's automobile hit the pole after he was forced off the road by a hit-and-run driver. The New Jersey court in **Oram** found in favor of the utility, holding that a finding of liability under those circumstances would require the company "to exercise extraordinary care rather than ordinary care to prevent injuries." **Id.** at 345. In the case at bar, Smoot was not forced off the road by a hit and run driver and did not hit a telephone pole with his bicycle or with a car. Instead, William Smoot was riding his bicycle in his neighborhood as he and other children had done on many occasions. It would not be an extraordinary leap of fate to imagine a child riding his bicycle a few yards off of the main road into a neighbor's yard for no other reason than to see what was at the bottom of the hill or yard or to take a short cut home. The Appellant is not requesting that the Appellees take "extraordinary" measures to prevent injuries caused by the unmarked guy wires but instead, the Appellant is merely suggests the simple and inexpensive marking of the guy wires in order to make the wires visible to people in the vicinity of the utility pole. The Appellant just requests that the Appellees exercise ordinary care and the same care exercised in other areas of his neighborhood.

C. NATIONAL ELECTRIC SAFETY CODE PROVIDES SAFEGUARDS FROM HAZARDS CAUSED BY UNMARKED GUY WIRES

The **National Electric Safety Code** contains the standards that cover the basic provisions for safeguarding persons from hazards which may arise from the installation, operation, and maintenance of electrical supply and communication systems.

The **2002 Edition of the National Electric Safety Code, Section 264E(1)** provides:

> The ground end of anchor guys exposed to pedestrian traffic **shall** be provided with a substantial and conspicuous marker (**emphasis added**)

The manifest purpose of this particular section of the National Electric Safety Code is to **protect persons** who may come into contact with guy wires. Obviously, when a person comes into contact with unmarked guy wires very serious injuries occur. By way of illustration, the Kanawha County paramedic who rendered first responder treatment to William Smoot described his leg injury as "like snapping a chicken's leg back." The injury resulted from William Smoot and his bicycle coming into contact with the unmarked guy wires.

The **National Electric Safety Code** has been adopted in the State of West Virginia as authoritative law. The standard regarding the placement of substantial and conspicuous guy wire markers is mandatory in nature as the standard utilizes the word

"shall" when addressing guy wires exposed to pedestrian traffic. The unmarked guy wires which William Smoot struck were clearly exposed to pedestrian traffic. This is abundantly clear in the photograph provided herein on **Page 6**. Although William Smoot was injured while riding his bicycle, the unmarked guy wires in question are easily accessible by foot as is evidenced by the mowed grass surrounding the entire area of the guy wires.

Furthermore and undeniably, the parties, counsel for the parties and the parties experts had "complete access" to the site and had no problem walking on or around the unmarked wires. The Appellee, Verizon's engineer, Ricky Myers stated that he had complete pedestrian access to the pole for his inspection and that the grass is kept mowed around the poles and wires. (**See**, Ricky Myers Deposition Transcript at Page 66) Furthermore, AEP Line Specialist, James Hannah, unequivocally testified that a child could ride his bicycle or walk in the area where the guy wires were located. (**See**, James Hannah Deposition Transcript at Page33-34 and page 40) The Appellant's expert, James Taylor explained that "during my inspection, I had complete pedestrian access to the site and no problem walking to the site or any objection from the property owner. (**See**, Page 11 of Report of James Taylor, attached to Appellant's Response to Motion for Summary Judgment as Exhibit F) Clearly, the lower court's ruling that the unmarked guy wires were not accessible to pedestrian traffic and therefore the Appellees had no duty to mark the wires was improper.

The mandatory nature of the National Electric Safety Code in requiring marking the guy wires is based upon the extremely dangerous condition created by the guy

wires when someone makes contact with the wires. Obviously, debilitating injuries can be caused by contact with the unmarked wires as William Smoot nearly lost his leg. The Appellees failure to mark the guy wires in this case is a clear violation of law and gives rise to a finding of liability against the Appellees.

An additional safeguard from hazards caused by unmarked guy wires can be found in the "mandatory inspection" section of the National Electric Safety Code. Specifically, **Section 214A (2) of the National Electric Safety Code** provides in pertinent part:

NESC Rule 214 – Inspection and Tests of Lines and Equipment:

A. WHEN IN SERVICE

1. **Initial Compliance** with rules:

   Lines and equipment shall comply with this rule when placed in service.

2. **INSPECTION**

   Lines and equipment shall be inspected at such intervals as experience has shown to be necessary.

3. **TESTS**

   When considered necessary, lines and equipment shall be subjected to practical tests to determine required maintenance.

4. **RECORD OF DEFECTS**

   Any defects effecting compliance with this code revealed by inspection or tests, if not promptly corrected, shall be recorded, such records shall be maintained until the defect are corrected.

5. REMEDYING DEFECTS

> Lines and equipment with recorded defects that could be reasonably expected to endanger life or property shall be promptly repaired, disconnected or isolated.

The evidence in this case is completely void of any inspection of the unmarked guy wires. Unfortunately, all of the Appellee utility companies failed to inspect the lines. Clearly, if any one of the Appellee utility companies inspected the power lines in question at any interval the dangerous condition of unmarked guy wires could have been easily ascertained and eliminated. Obviously, the mandatory inspection safeguard set forth in the National Electric Safety Code could have eliminated the unreasonable risk of harm to William Smoot created by the unmarked guy wires. Sadly, all the Appellee utility companies chose not to comply with their requisite duty.

D. Negligence, due care, proximate cause, and concurrent negligence are questions of fact for the jury

The establishment of a negligence claim requires a showing that an Appellee is guilty of some act or omission in violation of a duty owed to the Appellant. **Parsley v. General Motors Acceptance Corp.,** 167 W.Va. 866, 280 S.E.2d 703 (1981). The seminal case in West Virginia regarding the concept of duty in negligence actions is **Robertson v. LeMaster**, 171 W.Va. 607, 301 S.E.2d 563 (1983). Relying upon the common law as enunciated in the **Restatement (Second) of Torts** § 321 (1965), this Court held in **Robertson** that "[o]ne who engages in affirmative conduct, and thereafter realizes or should realize that such conduct has created an unreasonable risk of harm to another, is under a duty to exercise reasonable care to prevent the threatened harm."

Id. at 171 W.Va. at 611, 301 S.E.2d at 567, and *Syl. Pt. 2.* Further, this Court stated that while "foreseeability of risk is a primary consideration" in determining the scope of a duty an actor owes to another, "beyond the question of foreseeability, the existence of duty also involves policy considerations underlying the core issue of the scope of the legal system's protection... includ[ing] the likelihood of injury, the magnitude of the burden of guarding against it, and the consequences of placing that burden on the Appellee." **Id.** at 612, 301 S.E.2d at 568.

Furthermore, in **Robertson v. LeMaster,** 301 S.E.2d 563 (W. Va. 1983), this Court discussed the expanding concept of duty in tort cases, stating "[t]he liability to make reparation for an injury by negligence, is founded upon an original moral duty, enjoined upon every person, so to conduct himself, or exercise his own rights, as not to injure another." **Robertson,** *Syllabus Point 1.* "In negligence cases, the duty is always the same, to conform to the legal standard of reasonable conduct in light of the apparent risk." **Id.**, 301 S.E.2d at 567 (quoting W. Prosser, **The Law of Torts**, § 53 (4th ed. 1971)). "Whether a person acts negligently is always determined by assessing whether or not the alleged negligent actor exercised reasonable care under the facts and circumstances of the case, with reasonable care being that level of care a person of ordinary prudence would take in like circumstances. **Strahin v. Cleavenger,** 216 W.Va. 175, 603 S.E.2d 197 (W.Va. 2004) (citing Syl. Pt. 4, **Patton v. City of Grafton,** 116 W.Va. 311, 180 S.E. 267 (1935)).

The question of whether the Appellee owes a duty of care in a particular case must generally be rendered by the court as a matter of law. **Aikens v. Debow,** 208 W.Va. 486, 541 S.E.2d 576, 580 (W. Va. 2000). However, "related questions of negligence, due care, proximate cause, and concurrent negligence" are questions of fact for the jury. **Id.** (citing **Jack v. Fritts**, 193 W.Va. 494, 457 S.E.2d 431 (1995)). In **Aikens,** the Court reviewed its prior holding in **Robertson,** noting that while foreseeability of risk is a primary consideration in determining the scope of a duty one person owes to another, "[b]eyond the concept of foreseeability, the existence of duty also involves policy considerations, underlying the core issue of the scope of the legal system's protection." **Aikens**, 451 S.E.2d at 581; **Robertson,** 301 S.E.2d at 568. "Such considerations include the likelihood of injury, the magnitude of the burden of guarding against it, and the consequences of placing that burden of the Appellee." **Id.**

The facts in the case at bar, viewed in the light most favorable to the Appellant, clearly establish the existence of a legal duty of the Appellees to place markers on the guy wires that injured William Smoot as well as the breach of that duty.

1. The Guy Wires that Injured the Appellant are Exposed to Pedestrian Traffic and the Appellees had a Duty to Mark the Wires as a Matter of Law

In moving for summary judgment, the Appellees cited no West Virginia law supporting their claim that the Appellees owed no duty to the Appellant to mark the guy

wires that injured him.[6] Rather, the Appellees relied on **ANSI Standard C2** of the **National Electrical Safety Code** which provides that, "[t]he ground end of anchor guys exposed to pedestrian traffic shall be provided with a substantial and conspicuous marker." (**2002 ed. Section 264E(1)**) to support their argument of "no liability." However, American Electric Power ("AEP") Line Specialist James M. Hannah testified that AEP goes beyond the safety standards of the **National Electrical Safety Code** in the maintenance of their poles and lines. (**See**, J. M. Hannah Dep. at p. 36 attached to the Appellant Response to Motion for Summary Judgment as Exhibit E). Assuming the applicability of the **National Electrical Safety Code,** the duty of the Appellees to mark the guy wires that injured the Appellant is **established**, rather than negated, by the Appellees' admission that guy wires located in areas exposed to pedestrian traffic must be marked. The area where the Appellant's accident occurred, a few feet from a road frequented by bicycles and located in a residential subdivision was, in fact, easily accessible by pedestrians.

In denying the existence of a duty to mark the guy wires, the Appellees relied upon the opinion of their expert, Frank A. Denbrock, who stated that because the guy wires are located "several feet from the road" in an "area not easily accessible to either **pedestrian or vehicular traffic**," his opinion is that "the guy wires in question are not exposed to pedestrian traffic." (**See**, Appellees' Memorandum in Support of Motion for

[6]In fact, there is a dearth of West Virginia law cited in the Appellees' Memorandum in support of the Joint Motion for Summary Judgment, with the Appellees in one instance conceding the existence of "no current case in West Virginia directly on point." (**See**, Appellees' Memorandum in Support of Motion for Summary Judgment, p. 9).

Summary Judgment p.6). However, Mr. Denbrock somewhat conversely opines that the guy wires are "**open** and obvious."[7] **Id.** Mr. Denbrock's opinion is contradicted by the facts of the case, the photographic evidence as well as the report of the Appellant's expert, James Taylor.

Guy wires located in a residential neighborhood "several feet" from a road frequented by children and, in fact, inadvertently contacted by a child riding his bicycle are **obviously wires "exposed"** to pedestrian and other traffic. As noted, the wires had previously been hit by a motor vehicle driven by Clinton Carpenter. (**See**, C. Carpenter Dep., pp.7-9 attached to Appellant's Response to Motion for Summary Judgment as EXHIBIT D). Appellee, American Electric Power, had notice of this prior accident involving contact with the guy wires. (**Id.**, pp. 12, 16; J. M. Hannah Dep., p. 23 attached to Appellant's Response to Motion for Summary Judgment as EXHIBIT E). The Appellant's expert, James A. Taylor, in reviewing the facts of the case, states that the Appellant's accident occurred when Will Smoot, "went down the slope into an area that was **easily accessible to pedestrian traffic**, and struck the west cluster of **three unmarked** guy wires from the American Electric Power pole." (**See**, p. 10 of Report of J. Taylor, attached to Appellant's Response to Motion for Summary Judgment as Exhibit F) (**emphasis added**). He explains that, "During my inspection, I had complete pedestrian access to the site and had no problem walking to the site or any objection from the property owners." (**Id.** p. 11). His report further notes that the anchors

[7]Mr. Denbrook presumably reached his conclusion that the guy wires are "open and obvious" by walking the "several feet" from the road to observe the wires.

attached to the guy wires "appeared distorted," reportedly the result of being struck in the prior automobile accident. (**Id**. p. 9). Mr. Taylor further testified concerning the industry standard, stating that in his experience working with the Rural Electrification Administration, "Guy markers are supposed to be put on all the guys, period." (**See**, J. Taylor Dep., Vol. I, p. 15 attached to Appellant's Response to Motion for Summary Judgment as EXHIBIT A).

Verizon Engineering Manager Rickey Lee Myers testified that his inspection of the area where the accident occurred revealed that the grass is kept mowed around the pole and the wires. (**See**, R. L. Myers Dep. p. 66 attached to Appellant's Response to Motion for Summary Judgment as Exhibit G). He further noted that he had complete pedestrian access to the pole for his inspection. (**Id.** p. 72). AEP Line Specialist, James M. Hannah, further testified that a child could ride his bicycle or walk in the area where the guy wires are located (**See**, J. M. Hannah Dep. pp. 33-34; 40 attached to Appellant's Response to Motion for Summary Judgment as EXHIBIT E) further evidencing that the area is exposed to pedestrian traffic.

A poignant explanation of "pedestrian accessible" can be found in **McKinney v. Appalachian Electric Power Co.**, 261 F.2d 292 (4th Cir. 1958), which involved an action against a power company for injuries sustained by the Appellant when the television antenna he was carrying across the power company's right of way on a West Virginia mountainside (mounted on a ten-foot pole) brushed against uninsulated

electrical wire. The mountainside where the accident occurred was overgrown, with no marked paths or roadway. The Appellant's action against the power company alleged negligence and violation of statute, specifically **Section 232** of the **National Electrical Safety Code** which requires that, "The vertical clearance of all wires above ground in generally accessible places or above rails shall . . . be no less than the following: . . . (5) Spaces or ways accessible to pedestrians only . . . 15 feet." **Id.** at 293.

The lower court in **McKinney** ruled in favor of the power company on the ground that the mountainside where the accident occurred was not a "generally accessible place" within the meaning of **Section 232**. The **Fourth Circuit reversed**, finding that the trial court had defined the term "generally accessible place" too narrowly and that the absence of a well-defined road or path in the sparsely-populated rural area was not controlling. The Circuit Court reasoned that the manifest purpose of **Subsection (5) of the National Electrical Safety Code** was to protect pedestrians against dangers potentially arising from the maintenance of high voltage wires. The Court noted that electrical lines are frequently located in sparsely populated rural areas where pedestrian movement is limited to certain classes of users such as hunters and berry pickers. **Id.** at 295. The Court emphasized the fact that there was "no suggestion that the mountain . . . is not accessible on foot." **Id.**

The purpose of the **National Electrical Safety Code** requirement found in **Section 232** and the industry practice of marking guy wires are to make the guy wires

conspicuous and to prevent people from inadvertently coming into contact with the wires. In **McKinney,** the Fourth Circuit found wires located on a remote overgrown mountainside to be "accessible to pedestrians". Clearly, it would be without question that the guy wires at issue in this case, which are located in a residential subdivision a few yards from a public road would be defined as "accessible to pedestrians". The area surrounding the pole, owned by Anna Farley, is kept mowed. The location is clearly accessible to the public and pedestrian foot traffic. As in **McKinney**, there can certainly be no claim that the area where Smoot crashed is not accessible by foot. Since the Appellant accidentally came into contact with the unmarked guy wires while riding his bicycle, it follows that, contrary to the opinion of the Appellees' expert, the wires were exposed and accessible to "both pedestrian and vehicular traffic."

As noted, policy considerations also factor into the determination of whether a Appellee owed a duty to the Appellant, including considerations such as the foreseeability of injury, the magnitude of the burden of guarding against it, and the consequences of placing that burden on the Appellee. The fact that the location of the guy wires is such that the wires have been struck by an automobile and a bicycle certainly indicates that the area is accessible by pedestrians and makes such accidental contact with the wires **foreseeable**. The Appellant's expert, James Taylor, testified that the cost of guy markers is between $8.00 and $10.00 and that the markers are easily placed on the wires. (**See,** J. Taylor Dep., Vol. I, p. 15 attached to Appellant's Response to Motion for Summary Judgment as **EXHIBIT A**). Consequently, the

magnitude of any burden placed upon the Appellees by requiring placement of guy markers on the wires is *de minimus.* In fact, most poles, including a pole in the immediately vicinity of the one where the Appellant was injured are conspicuously marked. The minimal financial burden of placing eight dollars worth of markers on guy wires is far outweighed by the magnitude of the potential danger and injuries presented by inadvertent contact with unseen guy wires.

The facts of this case and applicable regulations establish that the Appellees had a duty to place substantial and conspicuous guy markers around the guy wires as a matter of law. The Appellees breached that duty resulting in severe injury to Appellant Will Smoot and their Motion for Summary Judgment should have been denied by the lower court.

2. Evidence concerning Whether Smoot was Operating an Out-of-Control Vehicle is Conflicting and gives rise to a Genuine Issue of Material Fact

Again citing no West Virginia law, the Appellees successfully argued to the lower court that they owed Appellant Smoot no duty because he was operating an out-of-control vehicle at the time he struck the guy wires. The Appellees maintained that they had no duty to guard against such "extraordinary exigencies." (**See**, Appellees' Memorandum in Support of Motion for Summary at p. 6). Clearly, a child riding his bicycle a few yards off the road and then striking unmarked guy wires cannot possibly

be described as an "extraordinary exigency".

Further, whether the Appellant was out of control at the time he hit the guy wires is a **hotly disputed** issue of material fact. The Appellant himself denies that he lost control of his bike. (**See**, W. Smoot Dep. p. 47 attached to Appellant's Response to Motion for Summary Judgment as EXHIBIT B). The Appellant's friends riding with him at the time of the accident also deny that he was out of control at the time he contacted the guy wires. Andrew Morrison, a 12-year-old boy riding with Smoot at the time of the accident, testified that Smoot's bike was upright when it went over the incline and that Smoot was "not completely out of control when he went over the hill." (**See**, A. Morrison Dep. p. 12 attached to Appellant's Response to Motion for Summary Judgment as Exhibit H). Another bicyclist, Josh Harper, stated that Appellant Will Smoot and his bike became airborne after hitting the rocks and going over the hill. (**See**, J. Harper Dep. p. 32 attached to Appellant's Response to Motion for Summary Judgment as EXHIBIT C). Since the Appellant remained upright on his bike after maneuvering through the rock lined driveway of Anna Farley, he clearly maintained enough control over his bicycle to have avoided the guy wires had such wires been visible. The Appellant's expert, James Taylor, testified that, based upon his review of the evidence and particularly the statement of Melba Jane Farley, the daughter of the landowner and an adult eyewitness to the accident, he believes that Appellant Smoot was still in control of his bicycle at the time he went over the hill and contacted the unmarked guy wires. (See, J. Taylor dep., Vol. II, p. 29 attached to Appellant's Response to Motion for

Summary Judgment as **EXHIBIT A**).

The inapplicable cases cited by the Appellees, involving "out of control" automobiles, did not involve factual disputes concerning whether the driver of the automobile was out of control. In addition, the duty sought to be imposed by the Appellants in those cases required far more than the mere placement of guy markers on guy wires. Finally, the operators of those vehicles would clearly fall outside the parameters of his case as the operators would all be over the age of fourteen years and held to a different legal standard.

In the case at bar, Appellant Smoot is not requesting that the Appellees take "extraordinary" measures to prevent injuries. Rather, the Appellant suggests that the Appellees should take the simple and inexpensive action of properly marking the guy wires in order to make the wires visible. Just as the duty imposed upon the Appellees would not be extraordinary, William Smoot's bicycle crash was not of such an unusual nature that the utility companies could not have reasonable anticipated and protected against it.

The evidence presented by William Smoot clearly establishes a prima facie case of negligence against the Appellee utility companies for the failure to place markers on the guy wires which nearly sheared off his leg. There is no applicable West Virginia law supporting a finding that if the Appellant lost control of his bicycle the Appellees are

relieved of their duty to mark the guy wires. If the proximate cause of the collision and the resulting injuries are due to the negligence of the Appellees the law is well settled the Appellees are responsible. At the very least a genuine issue of material fact exists which must be decided by a jury. Accordingly, the lower court's granting of summary judgment for the Appellees should be reversed by this Court and remanded back to the lower court with instructions.

VI. CONCLUSION

Appellant William T. Smoot, II, age 13, was severely injured when he crashed into unmarked guy wires on a utility pole jointly maintained by the Appellees. With minimal effort and expense, the Appellees could have placed markers on those guy wires to make them conspicuous. Since the wires are located in an area exposed to pedestrian traffic, the Appellees were required to place markers on the guy wires and the failure to do so breached the duty of due care to the Appellant.

The evidence presented by Appellant William T. Smoot, II, by his next of friend, Kari Major, establishes a *prima facie* case of negligence against the Appellees for the failure to place markers on the guy wires into which the Appellant crashed while riding on his bicycle. As demonstrated herein, nearly every salient fact in the case is subject to dispute and conflicting testimony. Accordingly, the Appellees' Joint Motion for Summary Judgment should have been denied.

VII. REQUEST FOR RELIEF

The Appellant, William Smoot, respectfully requests that this Court reverse the judgment of the Circuit Court of Kanawha County and remand this action with directions that it be reinstated on the docket of the lower court.

WILLIAM T. SMOOT, II by his
Next friend, Kari Major
By Counsel

Cynthia M. Ranson, Esquire - W.V. State Bar ID #4983
J. Michael Ranson, Esquire – W.V. State Bar ID #3017
Ranson Law Offices
1562 Kanawha Blvd. East
Post Office Box 3589
Charleston, West Virginia 25336-3589
(304)345-1990

Counsel for Appellant

No.: 3306

IN THE
SUPREME COURT OF APPEALS
OF
WEST VIRGINIA

WILLIAM T. SMOOT, II,
By his next of friend, KARI MAJOR,

Appellant,

v.

AMERICAN ELECTRIC POWER,
VERIZON OF WEST VIRGINIA, INC.
and CHARTER COMMUNICATIONS, INC.

Appellees.

CERTIFICATE OF SERVICE

I, Cynthia M. Ranson, counsel for plaintiff, hereby certify that I have served a true and exact copy of the foregoing **APPELLANT'S BRIEF** on the defendants' counsel of record via United States Postal Service, on **February 14, 2008** as follows:

Ronda Harvey, Esquire
Bowles, Rice, McDavid, Graff & Love
600 Quarrier Street
P.O. Box 1386
Charleston, WV 25325

Mark Hayes, Esquire
Robinson & McElwee
P.O. Box 1791
Charleston, WV 25326

Michelle Roman Fox, Esquire
Martin & Seibert
300 Summers Street, Suite 610
Charleston, WV 25301

Cynthia M. Ranson